

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROBERT ALEXANDER KASEBERG,
Plaintiff,
v.
CONACO, LLC, et al.,
Defendant.

Case No.: 15-cv-01637-JLS (DHB)

**ORDER REGARDING JOINT
MOTION FOR DETERMINATION
OF DISCOVERY DISPUTE
REGARDING DOCUMENT
PRODUCTION AT THE
DEPOSITION OF DANIELLE
WEISBERG**

(ECF No. 52)

On August 12, 2016, the parties filed a Joint Motion for Determination of Discovery Dispute Regarding Document Production at the Deposition of Danielle Weisberg. (ECF No. 52.) Having considered the arguments of the parties and the applicable law, and for the reasons set forth herein, the Court **GRANTS IN PART** and **DENIES IN PART** Plaintiff's motion.

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1 **I. BACKGROUND**

2 **A. Factual Background**

3 Plaintiff commenced this action on July 22, 2015 by filing a complaint against
 4 Defendants alleging copyright infringement. (ECF No. 1 (“Compl.”).) Plaintiff alleges he
 5 is a comedic writer engaged in the entertainment industry. (*Id.* at ¶ 14.) Plaintiff alleges
 6 that after he wrote and published four jokes on his personal online blog and/or Twitter
 7 account, each joke was subsequently featured in the monologue segment of the “Conan”
 8 show. (*Id.* at ¶¶ 15-21.)

9 Plaintiff alleges that he published a joke regarding a Delta flight on or about January
 10 14, 2015 on his personal online blog (“Joke #1”). (*Id.* at ¶ 15.) Defendants used a joke
 11 about a Delta flight in the Conan show monologue on January 14, 2015. (See ECF No. 36-
 12 1 (“Huskins Decl.”) at Exh. B at Definition K.) Plaintiff further alleges that, on or about
 13 February 3, 2015, he published a joke on his personal online blog and Twitter account
 14 regarding Tom Brady (“Joke #2”). (Compl. at ¶ 16.) Defendants used a joke about Tom
 15 Brady in the Conan show monologue on February 4, 2015. (Huskins Decl. at Exh. B at
 16 Definition M.) On or about February 17, 2015, Plaintiff alleges he published a joke on his
 17 personal online blog and Twitter account regarding the Washington Monument (“Joke
 18 #3”). (Compl. at ¶ 18.) Defendants used a joke regarding the Washington Monument in
 19 the Conan show monologue on February 17, 2015. (Huskins Decl. at Exh. B at Definition
 20 O.) Lastly, on or about June 9, 2015, Plaintiff alleges he published a joke on his personal
 21 online blog and Twitter account regarding Bruce Jenner (“Joke #4”). (Compl. at ¶ 19.)
 22 Defendants used a joke regarding Bruce Jenner in the Conan show monologue on June 9,
 23 2015. (Huskins Decl. at Exh. B at Definition Q.)

24 Plaintiff filed copyright applications for each of the jokes at issue, deeming them
 25 “literary works,” with the United States Copyright Office on March 10, 2015, March 11,
 26 2015, June 26, 2015, and July 8, 2015. (Compl. at ¶ 23; *see also* ECF No. 1-2.) These
 27 applications are pending. (*Id.*)

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1 Plaintiff seeks a permanent injunction, actual damages, statutory damages, increased
 2 statutory damages for willful infringement, and profits attributable to the infringement of
 3 Plaintiff's copyrights pursuant to 17 U.S.C. §§ 502(a) and 504. (*Id.* at pp. 6-7.) Plaintiff
 4 also seeks attorney's fees and costs and punitive damages. (*Id.* at p. 7.)

5 **II. DISCUSSION**

6 Plaintiff initially served a notice of deposition for Defendant Conaco, LLC
 7 employee, Danielle Weisberg, on April 18, 2016. (ECF No. 52-1 ("Lorenzo Decl.") at ¶
 8 2.) He thereafter re-noticed the deposition multiple times. (*Id.* at ¶¶ 7, 10.) The deposition
 9 notice, and subsequent deposition notices, requested that Ms. Weisberg produce the
 10 following documents:

- 11 1. All e-mail correspondences between Deponent and Josh Comers from January
 12 1, 2013 to December 31, 2015.
- 13 2. All e-mail correspondences between Deponent and Brian Kiley from January
 14 1, 2013 to December 31, 2015.
- 15 3. All e-mail correspondences between Deponent and Rob Kutner from January
 16 1, 2013 to December 31, 2015.

17 (*Id.* at Exhs. A, C, F.)

18 Plaintiff ultimately took Ms. Weisberg's deposition on July 1, 2016. (*Id.* at ¶ 11.)
 19 At the deposition, the only documents Ms. Weisberg produced were two emails related to
 20 the jokes at issue. (*Id.*) Plaintiff now moves to compel production of a subset of the
 21 requested documents, namely, all emails between Ms. Weisberg and Josh Comers, Brian
 22 Kiley, and Rob Kutner on the following dates: December 3, 2014, January 13, 2015,
 23 January 14, 2015, February 3, 2015, February 17, 2015, and June 9, 2015. (ECF No. 52 at
 24 p. 11.)

25 Plaintiff argues the requested emails are relevant to his claims and narrowly tailored
 26 to the dates on which the four jokes at issue were written, as well as two other dates.
 27 Plaintiff asserts that Ms. Weisberg is the writing assistant who acts as the liaison between
 28 the writers, Mr. Sweeney, Mr. O'Brien, and others on the writing team when it comes to

joke submission, as well as the person who notifies the writers of various meetings throughout the day which involve joke submissions. (*Id.* at p. 8.) Plaintiff further states that Ms. Weisberg testified at her deposition that e-mails are exchanged between her and Mr. Comers, Mr. Kiley, and Mr. Kutner throughout the day, which may include the proposed jokes, timing of meetings, when jokes are due to be submitted, and premises that may be suggested, among other things. (*Id.*) Plaintiff argues these emails “establish the daily routine, timing, processes, policies, and procedures of Conaco, LLC when it is creating and preparing jokes for use on the Conan show monologue,” and such routines, processes, policies, and procedures are “key to this case because they relate to the timing of the jokes submitted, the circumstances regarding the submission of jokes on certain days, and ultimately the elements of ‘access’; ‘intent’; and ‘copying’ in this litigation.” (*Id.* at p. 7.)

Defendants argue the requests are grossly overbroad on their face, duplicative of requests this Court has already held to be overbroad, unduly burdensome, and not likely to lead to admissible evidence, as well as unduly burdensome and not limited in subject matter relevant to Plaintiff’s claims. (*Id.* at p. 12, 15-20.) Defendants point to the Court’s prior order addressing Plaintiff’s Requests for Production Nos. 6-8 served on Defendant Conaco, LLC. In those Requests for Production, Plaintiff sought discovery of the following: any and all documents, including any and all emails, involving Josh Comers, Brian Kiley, and Rob Kutner, regarding any and all jokes these writers submitted to Conaco, LLC for use on the Conan show monologue in the last three years. (ECF No. 38-2 at Exh. 14.)

In denying Plaintiff’s motion to compel documents responsive to these requests, the Court held as follows:

The Court agrees with Defendants that Requests Nos. 6-8, as framed, are overly broad and unnecessarily burdensome. Although Plaintiff contends these requests are relevant to access, they are not specifically tailored to the issue of access, and thus are not likely to lead to relevant evidence. As Plaintiff has not made a specific showing that the burdens of production would be minimal, proportional to the needs of the case, and that the requested documents would lead to relevant evidence, the Court denies Plaintiff’s

1 motion to compel responses to Requests Nos. 6-8 beyond what Conaco has
 2 already agreed to produce. *See Sorosky v. Burroughs Corp.*, 826 F.2d 794,
 3 805 (9th Cir. 1987) (affirming district court's denial of a motion to compel
 4 documents where the requests were unnecessarily burdensome and overly
 5 broad and there was no "specific showing that the burdens of production
 6 would be minimal and that the requested documents would lead to relevant
 evidence"); *Nugget Hydroelectric, L.P. v. Pac. Gas & Elec. Co.*, 981 F.2d
 429, 438-39 (9th Cir. 1992) (same); *see also* Fed. R. Civ. P. 26(b)(1).

7 (ECF No. 47 at p. 17, lines 11-23.) The key phrase in this holding was "as framed," because
 8 the Court did not hold that the documents sought were wholly irrelevant, simply that the
 9 document requests "as framed," without any specific tailoring to the issue of access, and
 10 without any specific showing that the burdens of production would be minimal and
 11 proportional to the needs of the case, were overly broad and unduly burdensome. In the
 12 joint motion prior to the order, Plaintiff invited the Court to re-write his requests, which
 13 the Court declined to do.

14 Here, the Court finds that Plaintiff has made a specific showing that the e-mail
 15 correspondence between Ms. Weisberg and Mr. Comers, Mr. Kiley, and Mr. Kutner is
 16 relevant to Plaintiff's claims for the dates on which the jokes at issue were used in the
 17 Conan show monologue: January 14, 2015, February 4, 2015, February 17, 2015, and June
 18 9, 2015. The Court further finds that Plaintiff has narrowly tailored his requests, such that
 19 they are proportional to the needs of the case, and that the production of emails for these
 20 four days is not unduly burdensome. Accordingly, the Court grants Plaintiff's motion to
 21 compel responses to these document requests for these dates. The Court does not find,
 22 however, that Plaintiff has sufficiently demonstrated the relevance of Ms. Weisberg's
 23 emails for January 13, 2015 or December 3, 2014. Accordingly, the Court denies
 24 Plaintiff's motion to compel production of emails on these dates.

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III. CONCLUSION

For the foregoing reasons, the Court **GRANTS IN PART** and **DENIES IN PART** Plaintiff's motion to compel. (ECF No. 52.) The Court orders production of all e-mail correspondence between Ms. Weisberg and Josh Comers, Brian Kiley, and Rob Kutner on the following dates: January 14, 2015, February 4, 2015, February 17, 2015, and June 9, 2015.

IT IS SO ORDERED.

Dated: September 28, 2016

D. Partek

DAVID H. BARTICK
United States Magistrate Judge